IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

APPEAL FROM ORDER NO.918 OF 2007

Rajendra Lalitkumar Agarwal ...Appellant.
v.
1. Shankar Chunilal Oswal & Ors. ...Respondents.

Mr.S.U.Kamdar with V.B.Naik i/by Deepa Ahuja, advs. for the Appellant.

Mrs.Naina Desai i/by Udayan Jain, advs. for the Respondent No.1.

Mr.Shashi Jain, adv. for the Respondent Nos.2,3 and 4.

CORAM: J.H.BHATIA,J.
DATE: 13th December,2007.

P.C.

1. Heard the learned counsel for the Parties.

2. The appeal is filed by the plaintiff against the defendants. According to the plaintiff, he had negotiations with the defendants/respondents to purchase 77 R land out of the land bearing Survey No.22 Hissa No.1A/3/1 admeasuring 0.96 R, situated within the jurisdiction of Lonawala Municipal Council. After the negotiations on 19-11-2006, the agreement was finalised and defendants/respondents agreed to sell the land at the rate of Rs.1121/- per sq.yard and the consideration was fixed at as Rs.1,03,20,000/-. As per the agreement on the same day, the plaintiff paid an amount of Rs.11,000/- to the defendant no.1 as earnest money.

Balance amount was to be paid at the time of execution of sale deed. According to the plaintiff on 19-11-2006 itself a draft of deed of conveyance for sale of land was also prepared by Advocate Sandip Agrawal and the said draft deed was seen and approved by the defendants and thus, agreement was concluded. In view of this agreement, copies of the title deeds were handed over by the defendants to the plaintiff and with consent of the defendant no.1, the plaintiff also issued public notice in different newspapers calling objections if any, to such transaction. Notices were published on 25-11-2006. However, thereafter the defendants backed out from the transaction. On 23-12-2006 the plaintiff issued notice to the defendants through his advocate Sandip Agrawal stating all the terms of the agreement in the said notice and called upon the defendants to complete the deal and execute the same. Reply was immediately given on behalf of the defendants denying that any such deal had taken place and that the defendant no.1 had received any earnest money. Thereafter the plaintiff filed the suit for specific performance of the contract and also filed application, Exhibit 5 seeking direction to the defendants not to create any third party interest in the property. In respect of the claim, he filed affidavits of three persons namely, Maganlal Purohit the broker, Jyotikumar Agrawal the builder and Sandip Agrawal the advocate. The defendants denied the claim by filing reply. After hearing the parties, the learned trial

Court rejected the application on the ground that there was no writing or document to support the contention of the plaintiff.

3. Being aggrieved by the rejection of the application, the plaintiff has preferred the present appeal.

4. The whole claim of the plaintiff is based on oral negotiations between the parties and it is supported by three affidavits. The learned trial Court noticed that there is no document or writing to prove that such agreement had taken place between the parties. It is material to note that the property involved is 0.77 R i.e. about 7700 sq.mtrs. and according to the plaintiff price of the land was agreed to be Rs.1121/- per sq.yard. Thus, the value of the property of the plaintiff was settled at Rs.1,03,20,000/-. It is surprising to note that for such a huge property and transaction, no agreement was reduced to writing. Even though the plaintiff claims that an amount of Rs.11,000/- was paid to the defendant no.1 as earnest money, there is no document to support the contention that such payment was made to and received by the defendant no.1. If the amount would have been paid by cheque and the cheque was encashed, there could be some documentary evidence to provide corroboration to the claim of the plaintiff. However, in the present case

the learned counsel for the plaintiff/appellant made a statement that the payment was made by cash. If it is so atleast a receipt would have been passed by the defendants in favour of the plaintiff, which could provide corroboration to the plaintiff's claim. According to the plaintiff draft of the sale deed was seen and approved by the defendant no.1. However, there is no such document to show that the draft was approved by the defendant no.1. From the reply to the notice filed by the defendants and the reply filed before the Court in response to the application, Exhibit 5, it appears that some negotiations had taken place and for that purpose, the defendant no.1 had also permitted the plaintiff to verify the title and to find out if there was any objection to his title and hence, the plaintiff was permitted to issue public notice as per the chit dated 19-11-2006. After that, the public notice was issued in different newspapers on 25-11-2006 and no objection was received by the plaintiff. It is possible that when the negotiations take place for such a huge property before actually entering into the agreement, the purchaser seek copies of the title deeds and other relevant documents to verify whether the vendor has a valid title to dispose off the property. The purchaser may not part with any amount unless he is satisfied that the vendor has really good title, which could be transferred to him. In my considered opinion, merely because the plaintiff was allowed to issue public notice

and was also handed over the copies of title deeds and other documents for verification of the title of the defendants, it can not be said that agreement was actually entered into and the contract was concluded. In absence of any document to support the agreement for sale, it is really difficult to believe that the agreement was really concluded and that too in respect of such a huge property at hill station like Lonawala. The learned trial Court after hearing the parties refused to grant injunction or the interim relief in favour of the plaintiff. Temporary injunction is a discretionary relief and the learned trial Court used that discretion not to grant such a relief. Taking into consideration the facts and circumstances of the case, it is difficult to come to conclusion that the discretion was wrongly used.

5. Taking into consideration all the facts and circumstances, I find no reason to interfere in the impugned order. In the result, the appeal stands dismissed. The trial Court shall not be influenced in any manner by any observations made by the trial Court or by this Court in this judgment, while deciding the suit on its own merits.

(J.H.BHATIA,J.)